

INJUNCTION AGAINST OSHA DENIED: OSHA TO BEGIN ENFORCING ITS POST-ACCIDENT DRUG TESTING AND SAFETY INCENTIVE RULES TOMORROW (DECEMBER 1, 2016)

Labor & Employment Law Update

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OSHA previously delayed enforcement of its controversial post-accident drug testing and safety incentive rules until December 1, 2016. OSHA agreed to the delay at the request of a federal Judge who was considering a lawsuit requesting injunctive relief to prevent the new rules from going into effect. This week, the Judge issued a decision denying the request for injunctive relief. In light of the decision, OSHA announced it intends to begin enforcement of the new rules on December 1, 2016.

As a reminder, this injunction was filed because during the rulemaking process, OSHA indicated that **blanket** post-accident drug testing programs or safety incentive programs that discourage reporting of injuries may constitute a violation and subject employers to penalties. Industry groups filed suit asserting that OSHA overstepped its authority and did not follow correct rulemaking procedures. The industry groups sought a nation-wide injunction, which would have relieved all employers from the new rules.

Importantly, in the ruling denying the request for an injunction, the Judge determined that post-accident drug testing and safety incentive programs are not prevented under OSHA's new rules; OSHA is merely placing limitations on practices that might discourage the reporting of accidents. Employers should ensure that policies and practices concerning drug testing and safety incentives have been reviewed and updated in light of OSHA's new rules.